

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CRIMINAL CASE NO. 1:09cr52**

**UNITED STATES OF AMERICA,** )

)

)

**vs.**

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)

)

**DARRELL EUGENE BANKS.** )

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)

**ORDER**

**THIS MATTER** is before the Court on the Defendant's Motion for Preservation of Evidence [Doc. 51].

The Defendant pled guilty to three counts of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) and one count of possession of an unregistered firearm, in violation of 26 U.S.C. §§ 5861(d) and 5845. [Acceptance of Guilty Plea, Doc. 18]. On July 16, 2010, he was sentenced to a term of imprisonment of 108 months. [Judgment, Doc. 35]. The Fourth Circuit Court of Appeals affirmed his conviction and sentence on August 9, 2011. United States v. Banks, 442 F. App'x 759 (4th Cir. Aug. 9, 2011).

The Defendant now moves for the entry of an Order "preserving all evidence in the above Action." [Doc. 51 at 1]. The Defendant makes his

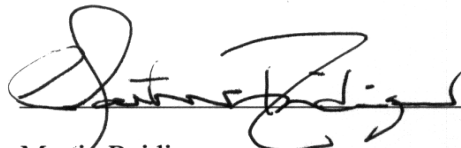
request “in furtherance of his Cause of Action, that is pending filing in this Honorable Court, under 28 U.S.C. § 2255.” [Id.]. The Defendant further requests that any forfeiture proceedings be immediately stayed and that such stay remain in effect until all post-conviction proceedings have been completed. [Id. at 2].

The Defendant’s conviction and sentence have been affirmed on appeal, and thus his criminal case no longer remains pending. It is concluded. Defendant has not filed any post-conviction proceeding. As such there is nothing presently pending before this Court regarding the Defendant or the evidence or items about which Defendant moves. Without a pending proceeding this Court has no jurisdiction to grant any relief. Accordingly, the Defendant’s motion to preserve evidence is denied.

**IT IS, THEREFORE, ORDERED** that the Defendant’s Motion for Preservation of Evidence [Doc. 51] is **DENIED**.

**IT IS SO ORDERED.**

Signed: May 4, 2012

  
Martin Reidinger  
United States District Judge

